

APPLICANTS:
Anthony Barmer and Reginald Scales

REQUEST: A variance pursuant to
to permit the creation of a second lot on
a panhandle

HEARING DATE: August 7, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5551

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Anthony M. Barmer

CO-APPLICANT: Reginald Scales

LOCATION: 1217 Bush Road, Abingdon
Tax Map: 62 / Grid: 2D / Parcel: 667
First (1st) Election District

ZONING: R1 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-22G(1) of the Harford County Code,
to permit the creation of a second lot on a panhandle in the R1 District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified L. Gerald Wolff, a registered land surveyor. Mr. Wolff stated that he was familiar with the subject property, and had prepared the preliminary plan for the subdivision of the property. Mr. Wolff was offered and accepted as an expert in subdivision and site plan design.

Mr. Wolff described the property as containing approximately 10.125 acres, zoned R1/Urban Residential. The property is located on the easterly side of Bush Road, north of Sewell Road. The surrounding zoning is generally R3 and R2. The parcel to the generally south side of the subject property contains a mobile home park, with R3 zoning. A development of single family homes is located to the east side of the property. Just to the north of the property and approximately one-tenth of a mile distant is the now abandoned and capped Bush Valley Landfill, which abuts non-tidal wetlands.

The subject parcel contains a relatively large pond which is somewhat to the southeast corner, and shown on Exhibit 8. The surface area of the pond is approximately 1.9 acres.

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Mr. Wolff explained that the only public road frontage to the property is along Bush Road on its southwest side. Abingdon Drive, shown on the plat as an existing road to the east of the property, is a private road. In addition to the pond, Mr. Wolff explained a significant hill or mound of earth is located on the northeast side of the property, just north of the pond. Non-tidal wetlands also exist along the northeast side and the southeast side of the parcel, with accompanying Natural Resource District buffers. Mr. Wolff explained that about 80% of the site is wooded, and the property is within 1,000 feet of the Chesapeake Bay. The property is classified as IDA/Intense Development Area, within the Chesapeake Bay Critical Area.

Mr. Wolff explained that the Applicants had received preliminary plan approval to subdivide the property into three lots, one of which would use a panhandle. The Applicants now propose to create a fourth lot which would also be accessed by way of a panhandle. This variance is accordingly requested in order to allow the fourth proposed lot to also be located on the panhandle. The Code allows only one panhandle lot without a variance.

Mr. Wolff explained that if granted the variance, 3 of the lots – 1, 2 and 4 as shown on Exhibit 8 – would be served by a common driveway. Lot 3, which has frontage on Bush Road, would have its own access. Lot 2, although it has direct access to Bush Road, would share the common drive along the panhandle with newly created Lot 1 (which would contain the existing dwelling) and the newly created Lot 4, both located to the rear of Lot 2 and 3 and off Bush Road.

Mr. Wolff feels there would be no adverse impact on any neighboring property owner and the resulting density of four units on this 10 acre tract is much less than allowed by Code.

The Chesapeake Bay Critical Area Commission has reviewed the request and has no opposition to the granting of the variance.

Mr. Wolff, for the Applicants, suggests that the creation of the second panhandle lot with the two newly created panhandle lots to use the same driveway, would be more environmentally friendly and is a more practical solution than a public road, or a more intensely developed site, given the topographical and natural resource features on the property.

Anthony Barmer, a co-owner of the property, next testified. Mr. Barmer stated that he has owned the property, which has been in his family for approximately five years. The property contains numerous natural resource features, including dense woods, a steep hill to the rear of the property, and extensive wetlands.

Mr. Barmer has spoken to all of this neighbors, none of whom object to the request.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, and the Department, are of the opinion the property is unique. The road frontage for this 10 acre + parcel is limited, consisting of approximately 270 feet along Bush Road. The four lots proposed are much less than allowed by density, as the property has public utilities available to it.

In addition to the unusual accumulation of environmental features on-site, the property is also bordered to the north by non-tidal wetlands. All three of the newly created lots will be located, however, outside of the Chesapeake Bay Critical Area.

A public road, which could be constructed, would have a much greater impact upon these environmental features.

The Staff Report originally recommended that all four lots share a common drive from Bush Road. Mr. McClune agrees that, in fact, Lot 3 should have its own drive to Bush Road, and Lots 1, 2 and 4 should share the common drive.

There was no evidence or testimony given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-22G(1) of the Harford County Code states:

- “G. *Panhandle – lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:*
- (1) *Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own a 10 acre parcel which is heavily impacted by environmental features. –A pond of about 2 acres in size is located on the property; a large, naturally formed mound of earth is located to the northerly side; the property is close to non-tidal wetlands; part of the property is actually within the Chesapeake Bay Critical Area; a stream system is partially located on the property; and a large part of the property is encumbered by Natural Resource District buffers. In addition to these environmental constraints this 10 acre parcel has only 270 feet of road frontage along Bush Road.

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However, the property can be serviced by public utilities, the property is zoned R1, and there obviously could be some significant density developed on-site. Instead, the Applicants propose what the Department of Planning and Zoning agrees is an environmentally friendly proposal, which is a development of 4 lots, with 2 lots being on panhandles and 3 of the lots sharing a common driveway. Certainly, this proposal would have significantly less of an environmental impact than would a development which included either a public road, or an increased number of private driveways.

The question is not whether the proposal is better from an environmental point of view than another type development. Rather, the question is whether the property has unique features which would cause the Applicant practical difficulty, which in turn should be alleviated by the granting of a variance.

Simply having an ability to create more lots, and an agreement to create fewer lots if granted a variance, cannot be the basis for the granting of a variance.

The Department of Planning and Zoning has found that a public road cannot be created on the site due to the environmental characteristics of the property. This is clearly a hardship, or at least a practical difficulty, as most R1 zoned parcels with public utilities available would be developable at higher densities, including the construction of a public road. The Applicants suffer a difficulty in not being able to do so because of the unique environmental aspects of their property.

The relief requested is certainly minimal. The Applicants ask only for permission to create one additional lot on a panhandle. Such a request will help preserve natural features on-site by avoiding construction of multiple driveways and/or a public road.

Accordingly, it is found that the property is unique due to its extreme physical and environmental characteristics which cause the Applicants to suffer a hardship. The relief requested, which is that they be allowed to construct one additional lot on a panhandle, is the minimum relief necessary to alleviate the hardship. There is no adverse impact on any adjoining property owner and, indeed, the proposal would appear to be environmentally sensitive.

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CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the following:

1. The Applicants shall submit a preliminary plan for review and approval by the Department of Planning and Zoning.
2. The Applicants shall submit the final plats to be approved by the County and recorded among the Harford County Land Records.
3. Lots 1, 2 and 4 shall be served by one common driveway. The Applicants shall submit a Common Drive Agreement with the final plat for review and approval.

Date: September 8, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 6, 2006.